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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/423,665	11/22/1999	BRIGITTE FALCONNIER	P64053US0	7027
136	7590	11/02/2005	EXAMINER	
JACOBSON HOLMAN PLLC 400 SEVENTH STREET N.W. SUITE 600 WASHINGTON, DC 20004			KUHN, SARAH LOUISE	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/423,665

Applicant(s)

FALCONNIER, BRIGITTE

Examiner

Sarah L. Kuhns

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 46-72 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 46-72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 46-72 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant claims the beverage containing "an effective amount of at least one phospholipid" in claims 1 and 70, but it is not clear what this amount is or what it is meant to be effective in doing. The same is true of claim 58, which claims "an effective amount of one or more substances which bring about destabilization of the microemulsion."

Claim Rejections - 35 USC § 102

Claims 46-72 are rejected under 35 U.S.C. 102(b) as being anticipated by Wolf et al., U.S. Patent 4,835,002, as evidenced by US Dispensatory and Wikipedia.

In regard to claims 46, 47 and 64, Wolf discloses a beverage containing anise oil (page 3, line 2), which inherently contains anethol (see US Dispensatory), comprising lecithin or hydroxylated lecithin (column 4, lines 4 - column 5, line 28) in the form of a

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mircoemulsion composed of nanosomes with a particle size of 10 - 60 nanometers (examples 6-13), of the type comprising anethol-phospholipid phase in aqueous alcoholic phase (column 4, lines 12-13).

In regard to claims 48 and 49, Wolf discloses the phospholipids being lecithin, which has the claimed structure and is also known as phosphatidylcholine (see Wikipedia).

In regard to claim 50, Wolf discloses the beverage being clear (column 9, line 54 - column 10, line 60).

In regard to claims 51, 53, 66, 67 and 70, the Examiner estimates 1 L to be 100 g. Therefore, Wolf discloses 0.01-45 g/L of oil (anise oil is mostly anethol, see US Dispensatory), 0.1-60 g/L of phospholipids, and 20-95 g/L of ethanol (column 7, lines 51-60).

In regard to claim 52, Wolf discloses the ratio of oil to surfactant of being 0.1-10 (column 7, line 68), which would make the ratio of lecithin to anethol approximately 0.1-10, since anise oil is mostly anethol (see US Dispensatory).

In regard to claim 54, it is not seen how the process of making the beverage will alter the final product, and as such, the teachings of Wolf also anticipate this claim. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is

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unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

In regard to claims 55, 56, 58-62 and 68, Wolf discloses the beverage optionally comprising one or more antioxidants, such as rosemary oil and oils derived from wood and bark (column 2, line 50 - column 3, line 45; blend of oils may be used, see column 9, lines 38-41) and also containing additional flavors, such as fruit extracts (column 10, lines 50-60).

In regard to claim 57, it would be inherent that the beverage of Wolf would become cloudy when an acidic liquid is added thereto because the beverage contains the same ingredients in the same amounts as Applicant.

In regard to claim 63, 71, and 72, it would be inherent that a cloudy beverage could be obtained in Wolf through dilution because the beverage contains the same ingredients in the same amounts as Applicant. Additionally, Wolf discloses that the microemulsion can be used in several products (anything containing flavor oils), which are sold in bottles, and though it says the microemulsions are particularly useful in products where clarity is desired, it does not exclude products where clarity is not desired (column 8, lines 56-61).

In regard to claim 65, it would be inherent that the beverage of Wolf would have the same turbidity as that of Applicant, since the two have the same ingredients in the same amounts.

In regard to claim 69, there is no suggestion in Wolf that the beverage either does or should contain calcium, magnesium, or manganese.

Response to Arguments

Applicant's arguments with respect to claims 46-71 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached at 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK


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